

December 20, 2006

Commission's Secretary  
Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Re: Comments Sought on Request for Declaratory Rulings  
WC Docket No. 06-210  
CCB/CPD 96-20

To Whom It May Concern:

In response to the Federal Communications Commission (FCC) Public Notice, released November 22, 2006, relating to DA 06-2360, CCB/CPD 96-20, inviting comments on a Declaratory Ruling filed by One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc. and Winback & Conserve Program, Inc., I hereby submit comment on behalf of myself and Combined Companies, Inc. (CCI), a company for which I was president and chief executive officer at all times relevant to the above captioned filings.

The FCC's notice was issued to resolve the issues under section 2.1.8 of AT&T's Tariff No. 2 as well as any other issues left open by the D.C. Circuit's Opinion in *AT&T Corp. v. FCC*, 394 F.3d 933 (D.C. Cir. 2005).

I. **Shortfall and Termination Obligations Must Stay with Combined Companies Inc (CCI)**

1) Our comments provided herein are based upon our reading, and our previous application of AT&T's tariff No 2. which covers AT&T's CSTPII/RVPP discount offering for toll free services to which CCI subscribed, and as a result, has personal knowledge of the issues relating to the above captioned Request For Declaratory Rulings.

2) The first question is whether CCI was permitted to transfer most of the aggregator end-users accounts from its CSTPII/RVPP discount plan to the deeper discounted Contract Tariff 516 (CT516) owned by Public Service Enterprises, (PSE). AT&T has maintained that CCI had to transfer the shortfall and termination obligations to PSE when CCI was just transferring just end-users but not the CSTPII/RVPP plan.

3) CCI disagrees with AT&T's position, and agrees with the FCC's Oct 17<sup>th</sup> 2003 Declaratory Ruling and petitioners position that shortfall and termination obligations do not transfer unless the entire CSTPII plan(s) are transferred. Therefore the shortfall and termination obligations must stay with the CSTPII/RVPP plan of CCI.

4) AT&T's tariff at 3.3.1.Q at the 10<sup>th</sup> paragraph makes it clear.

Shortfall and/or termination liability are the **responsibility of the Customer.**

AT&T, the FCC, the petitioners as well as CCI all agree that CCI would have remained AT&T's customer even after it transfers to PSE most of CCI's end-users. And by tariff the shortfall and termination obligations have to stay with CCI since the CSTPII/RVPP plan stays with CCI as AT&T's continued Customer of record.

5) The FCC's Oct 17<sup>th</sup> 2003 Declaratory Ruling actually agreed with AT&T's 1996 brief to the FCC that CCI's plans were not being terminated. FCC Declaratory Ruling Footnote 56 (see exhibit B to Petitioners 2006 Declaratory Ruling.)

Although AT&T also argues that the move also avoided the payment of tariff *termination* charges, *id.*, it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is not at issue here. Opposition at 3 n.1. That is consistent with the facts of this matter; petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter.

Given the fact that AT&T itself agrees that CCI's plan was not being terminated the only conclusion that can be found, as per AT&T's filed tariffs, is that shortfall and termination obligations must stay with CCI.

Additionally, if the tariff actually called for shortfall and termination obligations to transfer on traffic only transfers, but AT&T allowed tens of thousands of other traffic transfers to take place without the shortfall and termination obligations transferring, petitioners would still win under section 202 of the Communications Act due to discrimination because AT&T only

required petitioners to transfer shortfall and termination obligations and no one else.

## II AT&T Used an Illegal Remedy in Applying Charges

6) I and CCI, also agrees with petitioners Declaratory Ruling request number 5 page 36, that AT&T used an illegal remedy by initially billing shortfall charges to CCI's end-users (which were expressly NOT AT&T's customers). The FCC must agree with AT&T's tariff, that at best, if shortfall and/or termination were somehow appropriate in the application of shortfall charges on CCI end-users at the time they were applied, which CCI believes were not appropriate, AT&T was only permitted to reduce the discount amount of the CCI end-user - **provided only** if CCI itself did not pay those same charges. AT&T's tariff is clear:

For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan. (section 3.3.1.Q bullet 10) See petitioner's brief exhibit D.

7) This, of course, is not what AT&T did. Rather, AT&T unilaterally applied charges

well in excess of the end-users discounts causing numerous complaints, cancellations,

and state public utility and FCC filings by irate end-users within CCI's plans.

8) The FCC must decide that an illegal remedy was used in billing CCI's end-users for shortfall charges far in excess of the discounts afforded those end-users by CCI. CCI on information and belief has recently discovered that the FCC stance on illegal remedies is that the carrier can not rely on the remedy if the remedy was illegally inflicted.

9) The FCC's position on illegal remedies is that AT&T can not rely upon the remedy

(here the shortfall charges) if AT&T applied a shortfall illegally. The FCC must take the same position now as it did when it declared that AT&T violated its tariff by permanently denying the traffic transfer instead of the tariff remedy of temporarily suspending service. The illegal manner in which AT&T inflicted shortfall charges is just as illegal as the illegal remedy that the FCC has already declared that was not found fault with by the DC Court.

### III

#### Permissibility of the Shortfall Charges

10) CCI and I also requests that the FCC address all Declaratory Rulings requested by petitioners that will determine whether shortfall and termination charges were permissible as to CCI's CSTPII/RVPP plans when

applied in June of 1996. CCI, understands that the FCC has not issued a formal decision on the permissibility of shortfall because, as the Oct 17<sup>th</sup> 2003 FCC Ruling stated it was not asked.

11) The FCC did state on page 2 of its Oct 17<sup>th</sup> 2003 Declaratory Ruling that these CSTPII/RVPP plans were subscribed to prior to June 17<sup>th</sup> 1994 and this hints that these 3 year plans may be grandfathered as to shortfall and termination for three years until June 17<sup>th</sup> 1997. It would appear that since the June 17<sup>th</sup> grandfather rule was in affect 6 months prior to the Jan 1995 attempted transfer of most of CCI end-users to PSE, AT&T's extended forecast on the possibility of shortfall and termination charges on CCI's plans must be resolved by the FCC. Even if the FCC decides that the plans were not grandfathered for 3 years in Jan 1995 that still does not mean that that CCI's shortfall and termination obligations in Jan 1995 were to be transferred away with most of the end-users from CCI to PSE.

12) The FCC must determine whether these shortfall charges were permissible and if permissible were the shortfall charges illegally applied

13) In failing to decide the issue of the appropriateness of the shortfall charges as applied to CCI's end-users, AT&T now seeks to takes the position that the permissibility of shortfall charges has never been decided. Very

convenient for AT&T, because it appears as if AT&T gets hammered either way if it is decided. However, this position would appear to fail because AT&T based its decision not to transfer CCI's end-users **based upon its anti-fraud provisions**, declaring that the shortfall charges were totally permissible and an absolute certainty! Now AT&T is changing its position again, stating that petitioners' declaratory ruling issues having to do with permissibility, and additionally the illegal remedy issues are not before the FCC.

14) Since AT&T is now taking the position that the shortfall and termination charges may not have been permissible (much less appropriate as they applied them against CCI end-users), **AT&T is also conceding that it committed fraud in the inducement against CCI to get CCI to enter into a settlement agreement warranting to CCI that the shortfall and termination charges were applied according to the tariff and were therefore permissible as applied.**

15) All the Declaratory Rulings as submitted by the petitioner's must be determined by the FCC.

Respectfully submitted this date by Larry G Shipp Jr., and Combined Companies, Inc.

By\_\_//Signed//\_\_\_\_  
Larry G Shipp